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2       **IN THE UNITED STATES DISTRICT COURT FOR THE**  
3       **WESTERN DISTRICT OF MISSOURI**  
4       **SOUTHWESTERN DIVISION**

5       **UNITED STATES OF AMERICA,**                   ) Case No. 17-05023-01-CR-SW-RK  
6    )  
7       **Plaintiff,**                                    ) Springfield, Missouri  
8    ) January 29, 2018  
9       **v.**    )  
10      **RAYMOND ADAIR,**                                    )  
11      **Defendant.**                                    )  
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13       **TRANSCRIPT OF HEARING ON CHANGE OF PLEA**  
14       **BEFORE THE HONORABLE DAVID P. RUSH**  
15       **UNITED STATES MAGISTRATE JUDGE**

16 APPEARANCES:

17       For the Plaintiff:                           Mr. James J. Kelleher  
18   Assistant United States Attorney  
19   901 St. Louis St., Ste. 500  
20   Springfield, MO 65806  
21   (417) 831-4406

22       For the Defendant:                           Ms. Erica Mynarich  
23   901 St. Louis St., Ste. 1600  
24   Springfield, MO 65806  
25   (417) 831-6363

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34 Proceedings recorded by electronic sound recording, transcript  
35 produced by transcription service.

(Court in Session at 1:35 p.m.)

THE COURT: Calling in *United States vs. Raymond Adair.*

3 The defendant appears in person along with his attorney, Ms.  
4 Erica Mynarich. The United States appears by Assistant United  
5 States Attorney, Mr. Jim Kelleher. This matter is set this  
6 afternoon for a change of plea to the two-count Information which  
7 was filed back on May 25<sup>th</sup>, 2017, pursuant to a written Plea  
8 Agreement. Mr. Adair, you have signed a consent to have these  
9 proceedings for a plea of guilty before a Magistrate Judge, with  
10 the understanding that a United States District Judge, a judge of  
11 higher jurisdiction, will keep your case for acceptance of the  
12 plea of guilty and sentencing. Even though you signed this  
13 consent you have a right, if you wish, to appear before a United  
14 States District Judge, a judge of higher jurisdiction, for these  
15 proceedings. At any appearance before the District Judge, you're  
16 presumed innocent until such time, if ever, as the Government  
17 establishes your guilt beyond a reasonable doubt to the  
18 satisfaction of the judge or jury. You always have a right to be  
19 present and to confront and cross-examine witnesses. You have a  
20 right to use the power of the court to subpoena evidence on your  
21 behalf and you have a right to testify or not testify as you  
22 would choose. And if you chose not to testify it would not be  
23 held against you as that is your right. If, after understanding  
24 the charges against you, the range of punishment, if convicted,  
25 and your right to appear before a District Judge, if you wish,

1 you may waive or give up that right and proceed this afternoon  
2 before the Magistrate Judge. As I indicated, you and your  
3 attorney have signed such a consent. Do you understand that you  
4 have a right to appear before a United States District Judge, a  
5 judge of higher jurisdiction, for these proceedings?

6 MR. ADAIR: I do understand, Your Honor.

7 THE COURT: And is it your desire to give up that right  
8 and proceed this afternoon before the Magistrate Judge?

9 MR. ADAIR: Yes, it is, Your Honor.

10 THE COURT: Mr. Adair, do you understand the charge  
11 against you in Count One of the Information that's been filed in  
12 this case?

13 MR. ADAIR: I do.

14 THE COURT: Do you understand that if convicted of the  
15 charge in Count One, that the maximum penalty the court may  
16 impose is not more than 60 years imprisonment, not more than a  
17 \$250,000 fine, not less than five years supervised release or up  
18 to a life term of supervised release, and a \$100 mandatory  
19 special assessment?

20 MR. ADAIR: I do understand that, Your Honor.

21 THE COURT: To the charge in Count One, how do you wish  
22 to plead, guilty or not guilty?

23 MR. ADAIR: Guilty.

24 THE COURT: Do you understand the charge against you in  
25 Count Two of the Information that's been filed in this case?

1 MR. ADAIR: Yes, I do, Your Honor.

2 THE COURT: Do you understand that if convicted of the  
3 charge in Count Two, that the maximum penalty the court may  
4 impose is not more than 10 years imprisonment, not more than a  
5 \$250,000 fine, not more than five years supervised release, and a  
6 \$100 mandatory special assessment?

7 MR. ADAIR: I do, Your Honor.

8 THE COURT: To the charge in Count Two, how do you wish  
9 to plead, guilty or not guilty?

10 MR. ADAIR: Guilty, Your Honor.

11 THE COURT: Would you please raise your right hand as  
12 best you can?

13 RAYMOND ADAIR, DEFENDANT, SWORN

14 THE COURT: Has anyone made any threat of any kind to  
15 force you to plead guilty or give up any of the other rights  
16 we've discussed this afternoon?

17 MR. ADAIR: No, Your Honor.

18 THE COURT: You've signed a Plea Agreement. Have you  
19 read the Plea Agreement and gone over it with your attorney?

20 MR. ADAIR: Yes, I have.

21 THE COURT: Do you understand what's in it?

22 MR. ADAIR: Yes, Your Honor.

23 THE COURT: Other than what is contained in the Plea  
24 Agreement, has anyone made any promise of any kind to induce you  
25 or overcome your will to get you to plead guilty or give up any

1 of the other rights we've discussed?

2 MR. ADAIR: No, Your Honor.

3 THE COURT: Now, I mentioned to you that there was a  
4 supervised release term of not less than five years or up to life  
5 supervised release that could be imposed in your case as to Count  
6 One and not more than a five-year term of supervised release that  
7 could be imposed in your case as to Count Two. Do you understand  
8 that if those terms were imposed and then revoked for any reason,  
9 that you could be required to serve an additional term of  
10 imprisonment of not more than three years as to Count One and not  
11 more than two years as to Count Two. As to Count One, unless --  
12 and this is as to Count One only -- unless the provisions of 18  
13 U.S.C. Section 3583(k) supersede Section 3583(e)(3), in that case  
14 the court must impose a sentence of not less than five years, and  
15 under those scenarios that I've just described for you, if that  
16 happened you would receive no credit for any other time you had  
17 spent either in custody or on release? Do you understand that?

18 MR. ADAIR: I do, Your Honor.

19 THE COURT: Do you understand that the District Court as  
20 to both Count One and Count Two could impose an additional term  
21 of supervised release, which is governed by the maximum of the  
22 statute pertaining to each count, minus any time you'd spent in  
23 custody as a result of a violation?

24 MR. ADAIR: I do, Your Honor.

25 THE COURT: Do you understand that from a sentence

1 imposed in your case that there is no parole?

2 MR. ADAIR: Yes, I do.

3 THE COURT: Do you understand that there are Sentencing  
4 Guidelines to which the District Court or the sentencing judge  
5 would refer to in an advisory capacity when attempting to fashion  
6 a reasonable sentence in your case?

7 MR. ADAIR: Yes, Your Honor.

8 THE COURT: There are guideline calculations in your  
9 Plea Agreement. Have you discussed the guidelines with your  
10 attorney?

11 MR. ADAIR: Yes, I have.

12 THE COURT: And do you understand them?

13 MR. ADAIR: I believe so, Your Honor.

14 THE COURT: Do you understand that the final decision as  
15 to how the guidelines are calculated and ultimately what sentence  
16 will be imposed rests with the District Judge?

17 MR. ADAIR: Yes, I do, Your Honor.

18 THE COURT: If the District Judge would calculate the  
19 guidelines differently from what is in your Plea Agreement, and  
20 from what you've discussed with Ms. Mynarich, that fact would not  
21 give you the right to withdraw or change your plea of guilty. Do  
22 you understand that?

23 MR. ADAIR: I do.

24 THE COURT: Once the District Judge establishes the  
25 advisory guideline range, in some circumstances, you could be

1 sentenced above that range and, in other circumstances, you could  
2 be sentenced below that range. And again, the judge's decision,  
3 if you disagreed, would not give you the right to withdraw your  
4 plea of guilty. Do you understand that?

5 MR. ADAIR: I do understand, Your Honor.

6 THE COURT: Now, Mr. Adair, you have a right to a trial  
7 by jury with all the protections that I explained to you at the  
8 beginning of these proceedings. Do you understand your right to  
9 a trial by jury?

10 MR. ADAIR: I do, Your Honor.

11 THE COURT: And do you understand that if the court  
12 accepts your pleas of guilty that there won't be a trial?

13 MR. ADAIR: I do understand that.

14 THE COURT: I'm going to ask you about the offenses  
15 charged in Counts One and Two of the Information. I would remind  
16 you that you are under oath. You must answer truthfully. Any  
17 false answers could result in charges of false swearing or  
18 perjury. You always have the right to remain silent. And I want  
19 to refer you to your plea bargain agreement, specifically on page  
20 2, Paragraph 3 or Section 3, which is entitled in bold **Factual**  
21 **Basis for Guilty Plea.** That then takes up the remainder of page  
22 2, entirety of page 3 and onto a brief portion of page 4. Have  
23 you read Section 3 and gone over it with Ms. Mynarich?

24 MR. ADAIR: Yes, I have, Your Honor.

25 THE COURT: Are the statements contained in Section 3

1 true?

2 MR. ADAIR: They are, Your Honor.

3 THE COURT: Ms. Mynarich, you've had access to the  
4 Government's discovery file in this case, have you not?

5 MS. MYNARICH: Yes, Your Honor.

6 THE COURT: And based upon your review of the discovery  
7 file, are you satisfied if put to proof, that the United States  
8 could make a submissible case as to all the elements pertaining  
9 to Counts One and Two of the Information as set forth in  
10 Paragraph 3 of the Plea Agreement?

11 MS. MYNARICH: Yes, Your Honor.

12 THE COURT: There is an adequate factual basis for the  
13 pleas of guilty to Counts One and Two. I find that the plea is  
14 voluntary and did not result from force, threats or promises  
15 other than those set forth in the Plea Agreement. Mr. Adair, you  
16 are represented in this case by Ms. Mynarich. Have you had  
17 enough time to talk with her about your case?

18 MR. ADAIR: Yes, I have, Your Honor.

19 THE COURT: Are you satisfied with the advice that she's  
20 given you?

21 MR. ADAIR: Yes, Your Honor.

22 THE COURT: The law requires me to ask you if this  
23 afternoon you are on any medication prescribed by a physician or  
24 any drugs or alcohol of any kind which would affect your ability  
25 to understand these proceedings?

1           MR. ADAIR: No, Your Honor.

2           THE COURT: The plea bargain agreement that you've  
3 signed also contains what we refer to as an appeal waiver. And I  
4 want to refer you again back to your plea bargain agreement, this  
5 time on page 11, Paragraph 15 which is entitled in bold **Waiver of**  
6 **Appellate and Post-Conviction Rights.** Have you read Paragraph 15  
7 and gone over it with Ms. Mynarich?

8           MR. ADAIR: Yes, Your Honor.

9           THE COURT: And do you understand that by signing this  
10 Plea Agreement that you've given up those rights to appeal as set  
11 forth in Paragraph 15?

12          MR. ADAIR: I do understand that.

13          THE COURT: Understanding that and the other matters  
14 that we've discussed this afternoon, is it your desire for the  
15 court to accept these pleas of guilty?

16          MR. ADAIR: Yes, Your Honor.

17          THE COURT: Mr. Kelleher, on behalf of the United  
18 States, do you have any other record under Rule 11 that you think  
19 I need to make?

20          MR. KELLEHER: No, Your Honor. Thank you.

21          THE COURT: Ms. Mynarich, on behalf of the defendant, do  
22 you have any other record under Rule 11 that you think I need to  
23 make?

24          MS. MYNARICH: No, Your Honor.

25          THE COURT: I will recommend the pleas of guilty be

1 accepted and I will order a Presentence Investigation to be  
2 conducted by the Probation Office. With that, we'll be in  
3 recess. Thank you.

4 (Court Adjourned at 1:45 p.m.)

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I certify that the foregoing is a correct transcript  
5 from the electronic sound recording of the proceeding in the  
above-entitled matter.

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7       /s/ Lissa C. Whittaker  
8       Signature of transcriber

February 4, 2018  
Date